

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JOHN MAY,

Petitioner,

v.

TRACY MCCOLLUM,

Respondent.

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Case No. CIV-14-30-M

REPORT AND RECOMMENDATION

Petitioner John May, a state prisoner appearing pro se, has filed a motion for leave to proceed *in forma pauperis*, a supporting affidavit, and a certified statement showing the amount of money Petitioner has in his institutional accounts (Doc. No. 2). This matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C). Having reviewed said motion, the undersigned finds that Mr. May has a current available balance of \$145.35 in his institutional savings account, which is sufficient to prepay the \$5.00 filing fee in this petition for a writ of habeas corpus.¹

Because Mr. May has not demonstrated an inability to prepay the filing fee, the undersigned recommends that the District Judge:

- (1) deny the motion for leave to proceed *in forma pauperis*;

¹ Oklahoma law permits the use of funds from a prisoner's mandatory savings account to pay the filing fee for an action in federal court. Okla. Stat. tit. 57, § 549(A)(5).

- (2) order Mr. May to pay the full \$5.00 filing fee within 21 days of any order adopting this Report and Recommendation, *see* Rules 3(a), 12 of the Rules Governing Section 2254 Cases in the United States District Courts; LCvR 3.2, 3.3(e); and
- (3) dismiss the action without prejudice to refiling if Mr. May fails to timely pay the filing fee to the Clerk of this Court, or to show good cause for the failure to do so, within 21 days of any order adopting this Report and Recommendation, *see* LCvR 3.3(e).

NOTICE OF RIGHT TO OBJECT

Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by February 13, 2014, in accordance with 28 U.S.C. § 636 and Federal Rule of Civil Procedure 72. Petitioner is further advised that failure to timely object to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This report and recommendation does not terminate the referral.

ENTERED this 23rd day of January, 2014.



CHARLES B. GOODWIN
UNITED STATES MAGISTRATE JUDGE